

82 - 2096

IN THE

SUPREME COURT OF THE UNITED STATES

Office-Supreme Court, U.S.
F I L E D
ALEXANDER L STEVAS,
CLERK

OCTOBER TERM, 1982

NO. _____

THOMAS W. MOORE, APPELLANT,

v.

MICHAEL N. KHOURIE &
DRAPER B. GREGORY ET AL., APPELLEES.

ON APPEAL FROM THE NINTH CIRCUIT
UNITED STATES COURT OF APPEALS*

SUPPLEMENTAL APPENDIX BY APPELLANT*

THOMAS W. MOORE
APPELLANT PRO SE
139 SLEEPY HOLLOW LANE
CONGERS, NY 10920
(914) 268-6704

* ALSO BY PETITIONER FOR CERTIORARI &
EXTRAORDINARY WRITS

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FILED
April 15, 1983
United States Court of Appeals
Ninth Circuit
Phillip B. Winberry, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. C.A. 81-4389

C.A. 81-4416

C.A. 81-4562

Dst Ct. C 78 1416 TEH Northern California

THOMAS W. MOORE,
Plaintiff-Appellant,
vs
BROAD, KHOURIE & SCHULTZ
(Professional Corporation)
et al
Defendants-Appellees,
DRAPER B. GREGORY,
Appellee.

) Notice of Ap-
peal and Notice
of requested
transmittal of
certified - en-
tire docket and
record of every
document inclu-
ding rescinded
dismissals,
plus returned
letters and
most important-
ly all doc-
uments both by
appellant/peti-
tioner*/complain-
ant and orders
by Court and
Chief Judge RE:
Appendix B, 28
USC Sec. 372(c)
and all motions
and motion or-
ders by this
circuit.

*Includes Petition for
Writ of Mandamus of 13
sets of documents - TWM

Pursuant to every citation, precedent, statute, federal law and U.S. Constitutional law included in the 1255 pages plus 60 preliminary pages of Supreme Court Practice 5th Ed. 1978 by Robert L. Stern & Eugene Gressman including all supplements through today's date, plus Rules of the Supreme Court of the United States Revised through today's date, Plaintiff-Appellant, Thomas W. Moore hereby appeals the filed 3/31/83 denial of Moore's Petition for Rehearing dated 3/15/83.

This notice is filed within the statutory 20 day required time period of every law cited above. Appellant notifies all parties and both Courts that Appellant is not hereby choosing to Appeal rather than Petition for Writ of Certiorari, rather Appellant reserves his rights to EVERY procedure including prosecution of the District Court and U.S. Court of Appeal.

Dated: 4/14/83

Thomas W. Moore

(9th Circuit Court of Appeals Memorandum)

FILED

March 4, 1983

United States Court of Appeals

Ninth Circuit

Phillip B. Winberry, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. C.A. 81-4389
C.A. 81-4416
C.A. 81-4562
D.C. No. C 78-1416 TEH

THOMAS W. MOORE, Plaintiff-Appellant,)	MEMORANDUM
vs)	Appeal from the
BROAD, KHOURIE & SCHULZ (Professional Corporation) et al)	United States District Court For the Nor- thern District of California
Defendants-Appellees,)	Thelton E. Henderson, Dis- trict Judge, presiding Sub- mitted Without Argument Jan- uary 11, 1983.
DRAPER B. GREGORY, Appellee.)	

Before: GOODWIN and SNEED, Circuit Judges,
and FRYE, District Judge.

Moore appeals an order of the district court granting specific performance of a settlement agreement entered into between

Moore and appellees, his former counsel. We affirm.

Moore brought a malpractice action against appellees based on appellees' services in an earlier antitrust action. The district judge referred the case to a magistrate, who recommended settlement for \$110,000. Moore at first refused to settle, but later agreed to settle for \$110,000, of which \$40,000 was his attorney's fee. The parties acknowledged this settlement in open court before the district judge.

Soon thereafter, Moore repudiated the settlement agreement, saying that it was coerced. Appellees and Moore's attorney then moved for specific performance. The district judge found that the settlement agreement was openly arrived at and was moreover fair and reasonable. This finding is subject to review under Fed. R. Civ. P. 52(a) under a clearly erroneous standard. The district court's finding that Moore had

settled his claims against appellees was not clearly erroneous.

We also find that the district judge did not abuse his discretion in denying Moore's motion to amend his complaint to include an intentional tort claim, given the proximity of the trial date and the end of the discovery period. The district court's finding that the settlement agreement included waiver of Moore's intentional tort claims is not clearly erroneous.

Moore also argues that the settlement agreement was the result of a mistake, in that had he and the district judge known of Dart Industries v. Liberty Mutual Insurance Company, 484 F.2d 1295 (9th Cir. 1973), his motion to amend the complaint would have been granted and his case worth more in settlement. Dart, however, does not apply here because the intentional tort of one partner in a partnership is automatically "ratified" by the entire partnership. Cal. Corp. Code §§ 15013-15015. Hence, even had appellees

committed an intentional tort, their insurer could not have paid damages for this tort to Moore. See Evans v. Pacific Indemnity Co., 49 Cal App.3d 537, 122 Cal. Rptr. 680 (1975).

Finally, the district court did have the power to order specific performance of the settlement agreement. See Gregory v. Hamilton, 77 Cal. App.3d 213, 142 Cal. Rptr. 563 (1978).

AFFIRMED.

(9th Circuit Court of Appeals Order)

FILED
March 31, 1983
United States Court of Appeals
Ninth Circuit
Phillip B. Winberry, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. C.A. 81-4389
C.A. 81-4416
C.A. 81-4562
D.C. No. C 78-1416 TEH

THOMAS W. MOORE, Plaintiff-Appellant,) ORDER
vs)
BROAD, KHOURIE & SCHULZ, MICHAEL N. KHOURIE, et al Defendants-Appellees,) Appeal from the United States District Court For the Northern District of California Thelton E. Henderson, Dis- trict Judge, presiding Sub- mitted Without Argument Jan- uary 11, 1983.
DRAPER B. GREGORY, Appellee.)

Before: GOODWIN and SNEED, Circuit Judges,
and FRYE*, District Judge.

Appellant's petition for rehearing is
denied.

*Honorable Helen J. Frye, United States District Judge for the District of Oregon, sitting by designation.

* Key |

FILED

Dec. 27, 1982

United States Court of Appeals
Ninth Circuit
Phillip B. Winberry, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. C.A. 81-4389

C.A. 81-4416

C.A. 81-4562

THOMAS W. MOORE,)
Plaintiff-Appellant,)
vs)
BROAD, KHOURIE & SCHULZ) ORDER
et al)
Defendants-Appellees,)
DRAPER B. GREGORY,)
Appellee)

Appellant's "Emergency Motion . . . For Ruling . . ." is denied. As indicated by this court's order of December 16, 1982, this case will be submitted without oral argument and will stand submitted on the briefs January 11, 1983.

James R. Browning
Chief Judge

(9th Circuit Court of Appeals Order)

* Key 2

FILED

Nov. 9, 1982

United States Court of Appeals

Ninth Circuit

Phillip B. Winberry, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 81-4389

81-4416

81-4562

DC# CV-78-1416-TEH Northern California

THOMAS W. MOORE,)	
Plaintiff-Appellant,)	
vs)	
BROAD, KHOURIE & SCHULZ,)	ORDER
MICHAEL N. KHOURIE, JOHN W.)		
BROAD, ROYCE H. SCHULZ,)	
Defendants-Appellees,)	
DRAPER B. GREGORY,)	
Appellee.)	

PREGERSON and POOLE, Circuit Judges

Appellant's motion to "dismiss" appellees and to strike appellees' briefs and supplemental excerpts of records are denied.

(9th Circuit Court of Appeals Order)

*Key 3

FILED

Aug. 6, 1982

United States Court of Appeals

Ninth Circuit

Phillip B. Winberry, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 82-7429, 81-4389

81-4416, 82-4562

DC# 78-1416 TEH Northern California

THOMAS W. MOORE,)	
Petitioner,)	
)	
vs.)	
)	
UNITED STATES DISTRICT)	ORDER
COURT FOR THE NORTHERN)	
DISTRICT OF CALIFORNIA,)	
Respondent,)	
)	
and)	
)	
BROAD, KHOURIE & SCHULTZ)	
et al.,)	
Real Parties in Interest)	

PREGERSON and NORRIS, Circuit Judges

The court issues the following order:

- (a) appellant's emergency petition for writ of mandamus is denied;
- (b) appellant is ordered to file his

opening brief in the consolidated appeals 81-4389, 81-4416, and 81-4562 within fourteen (14) days from entry of this order;

(c) appellant's failure to comply with this order will result in dismissal of the consolidated appeals; and

(d) in view of appellant's continuing request for relief on identical grounds despite the court's repeated denials of relief, appellant is admonished to refrain from filing any further motions or complaints in this court based on his allegations that the district court is withholding or has altered certain portions of the district court record.

*Key 3

FILED

Oct. 14, 1981

United States District Court
Northern District of California
William L. Wittaker, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C 78 1416 TEH

THOMAS W. MOORE,)
Plaintiff-Appellant,)
vs.) NOTICE OF
BROAD, KHOURIE & SCHULTZ) APPEAL
et al)
Defendants-Appellees,)
)

Plaintiff-Appellant, Thomas W. Moore,
appeals the "Amended Judgment pursuant to
Settlement Agreement" by District Court
Judge Thelton E. Henderson filed October 1,
1981. This appeal is directed to transfer
all matters contained in the "Judgment" to
the Ninth Circuit Court of Appeals.

Moore notifies Case Systems Administrator, Ms. Florence K. Walsh that - in particular - Moore expects to receive a copy of the record that includes all items men-

tioned in Moore's September 10, 1981 letter addressed to the District Court with a copy to the Ninth Circuit Court of Appeals.

Unless Moore receives a FREE copy of each item listed in Moore's September 10, 1981 letter, Moore will be forced - once again to move the Court of Appeals to order Judge Thelton E. Henderson to produce exact originals of said documents.

Attached is my third check for \$70.00 (Seventy Dollars). So far Judge Henderson has forced me to pay \$210.00 (Two Hundred and Ten Dollars) or exactly THREE times the cost that this appeal should require.

For \$210.00 Moore is entitled to something FREE.

Dated: October 6, 1981

Thomas W. Moore

(U.S. District Court Northern District
of California Judgment)

FILED

Oct. 1, 1981

United States District Court
Northern District of California
William L. Wittaker, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C 78 1416 TEH

THOMAS W. MOORE,)
Plaintiff,)
vs.) AMENDED
BROAD, KHOURIE & SCHULTZ,) TO SETTLE-
a professional corporation) MENT AGREE-
JOHN W. BROAD, MICHAEL N.) MENT
KHOURIE, ROYCE H. SCHULZ,)
EUGENE C. CREW, and BROAD)
KHOURIE AND SCHULZ, pro-)
fessional partnership,)
Defendants.)

The motion of the defendants in the above-entitled action for entry of a judgment enforcing the terms of the settlement agreement which was made on March 3, 1981, came on regularly for hearing before the Court on this date. The Court having considered the evidence and the arguments

offered in support of and in opposition to said motion, it is hereby ordered that the said motion shall be, and the same is hereby granted, and the Court does hereby make the following findings:

1. On March 3, 1981, the plaintiff, Thomas W. Moore, and the defendants in the above-entitled action entered into a settlement agreement under which they agreed to compromise and settle the above-entitled action. Under the terms of said settlement agreement, the defendants agreed to pay the plaintiff the sum of One Hundred and Ten Thousand and 00/100 Dollars (\$110,000.00), and the plaintiff agreed to execute a full release of all claims against the defendants arising out of the subject matter of the above-entitled action, and to authorize the execution, filing and entry of a dismissal with prejudice of the above-entitled action.

2. The said settlement agreement was fair and reasonable as to all parties, and the agreed payment of One Hundred and Ten

Thousand and 00/100 Dollars (\$110,000.00) is a fair and reasonable consideration for the agreement of plaintiff Thomas W. Moore to execute a full release of all claims against the defendants arising out of the subject matter of the above-entitled action, and to authorize the dismissal with prejudice of said action.

3. An award of money damages in an action at law would not be an adequate remedy for the breach of the said settlement agreement by plaintiff, inasmuch as the agreed consideration to the defendants in the said settlement agreement was a full release of all claims of the plaintiff against these defendants arising out of the subject matter of the above-entitled action, and a dismissal with prejudice of said action. The defendants are therefore entitled to specific performance of the said settlement agreement.

4. The said settlement agreement was the compromise of a disputed claim, and

nothing herein ordered or adjudged shall constitute a finding or adjudication that any party to this action has been guilty of negligence, breach of duty or any other misconduct.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Judgment is hereby given in favor of the plaintiff, THOMAS W. MOORE, and against the defendants, BROAD, KHOURIE & SCHULZ, a partnership, (successor to Broad, Khourie & Schulz, a Professional Corporation), MICHAEL N. KHOURIE, JOHN W. BROAD, ROYCE H. SCHULZ and EUGENE C. CREW for the sum of One Hundred and Ten Thousand and 00/100 Dollars (\$110,000.00).

2. Plaintiff, THOMAS W. MOORE, shall execute and file with the Clerk of the Court a written authorization for the dismissal with prejudice of the above-entitled action, and if the said plaintiff, THOMAS W. MOORE, fails to execute and file such a written authorization, the Clerk of the Court shall,

upon proof being made of the payment of the said sum of One Hundred and Ten Thousand and 00/100 Dollars (\$110,000.00), proceed to enter a dismissal with prejudice of the above-entitled action.

3. The plaintiff, THOMAS W. MOORE, shall execute a full release of all claims against the defendants arising out of the subject matter of the above-entitled action, and if the plaintiff, THOMAS W. MOORE, fails to execute such a release, then this judgment shall have the effect of releasing the said defendants from all claims of the plaintiff, THOMAS W. MOORE, against the said defendants arising out of the subject matter of the above-entitled action.

4. The expression "all claims of the plaintiff against the defendants arising out of the subject matter of the above-entitled action," wherever it appears in this judgment is defined and shall be interpreted to include the following:

- (a) All claims of the plaintiff against the defendants which were asserted or

alleged by the plaintiff in the complaint or the first amended complaint which was filed in the above-entitled action.

(b) All claims of the plaintiff against the defendants which were asserted or alleged in any of the pre-trial statements which were filed by or on behalf of the plaintiff in the above-entitled action.

(c) All claims of the plaintiff against the defendants which were asserted or alleged in any amended complaint which the plaintiff, by motion, proposed or attempted to file in the above-entitled action.

(d) All claims of the plaintiff against the defendants which were asserted or alleged in the counter-claim which was filed by the plaintiff, Thomas W. Moore, against the said defendants on or about January 29, 1976, in Action No. C-70-1431 (RFP) in the United States District Court, Northern District of California.

(e) All claims of the plaintiff against the defendants for alleged negligence, fraud, or other misconduct based upon acts or omissions of defendants while acting as attorneys for the plaintiff, Thomas W. Moore, including all claims for compensatory damages and all claims for punitive damages.

5. Each party shall bear his own costs.

Dated: September 30, 1981.

Thelton E. Henderson
United States District
Judge

(U.S. District Court Northern District
of California)

FILED

Aug. 14, 1981

United States District Court
Northern District of California
William L. Wittaker, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

APPEAL DOCKET #81-4389
DISTRICT COURT #C 78 1416 TEH

THOMAS W. MOORE,)
Plaintiff-Appellant,) SECOND
vs.) AMENDED
BROAD, KHOURIE & SCHULTZ) NOTICE OF
et al) APPEAL
Defendants-Appellees.)
)

Plaintiff-Appellant, Thomas W. Moore,
appeals the July 31, 1981 order entered by
Judge Thelton E. Henderson in addition to
each of the matters included in my appeal
filed July 21, 1981.

Each of the documents that Moore filed
between July 21, 1981 and todays date are
included as a portion of this second amended
appeal.

In particular each and every word contained in Judge Henderson's July 31, 1981 order are to be forwarded with the record of this appeal, however, three words require specific emphasis; these are: "frivolous", "stayed", "merit". That a United States District Court Judge would enter into a personal vendetta with a layman who has been denied a jury trial for eleven years in this United States District Court is unconscionable.

Dated: August 7, 1981

Thomas W. Moore

(U.S. District Court Northern District
of California Order)

FILED

July 31, 1981

United States District Court
Northern District of California
William L. Wittaker, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. 78-1416 TEH

THOMAS W. MOORE,)
Plaintiff,)
vs.) ORDER TO
BROAD, KHOURIE & SCHULZ,) THE CLERK
a professional corporation) OF THE
JOHN W. BROAD, MICHAEL N.) UNITED
K HOURIE, ROYCE E. SCHULZ,) STATES
EUGENE C. CREW, and BROAD) DISTRICT
K HOURIE AND SCHULZ, pro-) COURT
fessional partnership,)
Defendants.)

On March 3, 1981, the parties in the above captioned case entered into a settlement agreement. Subsequently, this Court entered a Judgment pursuant to the settlement agreement on June 1, 1981, the effect of which was to terminate the litigation.

Since this Judgment was entered, plaintiff has submitted numerous pleadings

raising a large number of questions about a variety of matters.

After having reviewed the pleadings, this Court concludes that plaintiff is abusing the process of this Court and that his pleadings filed subsequent to the settlement agreement are frivolous. Accordingly,

IT IS HEREBY ORDERED THAT:

1. The Clerk of this Court shall not file any pleadings or documents submitted by plaintiff, Thomas W. Moore, in this action after the date of this Order.

2. This action is hereby stayed until plaintiff's appeal in the Ninth Circuit is resolved.

3. The Clerk of this Court shall not file any further petition or complaint of Thomas W. Moore. Such complaints or petitions will be lodged with the Clerk and considered by any Judge of the Northern District, then filed only if they are found to have merit.

Dated: July 31, 1981

Thehton E. Henderson
United States District
Judge

FILED

July 21, 1981

United States District Court
Northern District of California
William L. Wittaker, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C 78 1416 TEH

THOMAS W. MOORE,)
Plaintiff,) AMENDED NOTICE
vs.) OF APPEAL TO
BROAD, KHOURIE & SCHULTZ) THE NINTH CIR-
et al) CUIT COURT OF
Defendants.) APPEALS OF
) PLAINTIFF-APPEL-
) LANT THOMAS W.
) MOORE JUNE 18,
) 1981 NOTICE OF
) APPEAL

TO: DRAPER B. GREGORY AND RICHARD S. BISHOP:

YOU ARE HEREBY NOTIFIED that plaintiff-Appellant Thomas W. Moore has only received notice of the July 8, 1981 Judgment prepared by Draper B. Gregory and signed by Judge Thelton E. Henderson. This Judgment is herebyAppealed to the United States Court of Appeals for the Ninth Circuit.

Due to the threatened mail strike to occur on July 20, 1981 Plaintiff-Appellant

may fail to receive a judgment in favor of Broad, Khourie & Schulz that may include dismissal with prejudice Plaintiff-Appellant's rights to bring FRAUD and MALICE claims in any State Court in the United States. If this occurs Plaintiff-Appellant hereby asserts notice of appeal of this second judgment.

Payment for this appeal was included with my June 18, 1981 Notice.

Dated: July 18, 1981

Thomas W. Moore

(U.S. District Court Northern District
of California Judgment)

FILED

July 9, 1981

United States District Court
Northern District of California
William L. Wittaker, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil No. C 78-1416 (TEH)

THOMAS W. MOORE,)
Plaintiff,)
)
vs.) JUDGMENT
)
BROAD, et al.,)
Defendants,)

Pursuant to an order of this Court made
on June 1, 1981, Judgment is hereby rendered
in favor of Draper B. Gregory against THOMAS
W. MOORE in the sum of Forty Thousand Dol-
lars (\$40,000.00).

It is further adjudged that the
\$40,000.00 shall be a lien in favor of
Draper B. Gregory on any sum of money
awarded or agreed to be paid to THOMAS W.
MOORE because of any judgment or settlement

in connection with the above-entitled action.

Dated: July 8, 1981

Thelton E. Henderson
Judge of the United
States District Court